

CH. 51
TRIAL JOINDER AND SEVERANCE

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§51-1

Joinder of Codefendants

[People v. Olinger, 112 Ill.2d 324, 493 N.E.2d 579 \(1986\)](#) Defendants who are jointly charged should be jointly tried, unless a separate trial is necessary to avoid prejudice.

A defendant has a statutory right to file a pretrial motion for severance. Such a motion must state how defendant would be prejudiced by a joint trial; the mere apprehension of prejudice is insufficient. Whether a severance should be granted is left to the discretion of the trial judge.

In general, there are two possible grounds for severance:

1. Where the State attempts to use one codefendant's hearsay statements to implicate another codefendant, the trial court should either grant a severance or redact the hearsay statements to remove all references to the second codefendant.

2. Where codefendants' defenses are so antagonistic that one or more cannot receive a fair trial when jointly tried, a severance must be granted. [People v. Harris, 198 Ill.App.3d 1002, 556 N.E.2d 709 \(1st Dist. 1990\)](#).

[People v. Brooks, 51 Ill.2d 156, 281 N.E.2d 326 \(1972\)](#) The trial court did not err in denying severance; the defenses were not antagonistic where each codefendant testified to an alibi.

[People v. Daugherty, 102 Ill.2d 533, 468 N.E.2d 969 \(1984\)](#) Where each defendant made a statement blaming the other, the trial court erred by denying a motion for severance. The State's agreement not to introduce either defendant's statement at trial merely eliminated problems under the Confrontation Clause and did not solve the problem of codefendants presenting antagonistic defenses:

"When co-defendants have each made statements implicating the other but professing their own innocence, it is almost inevitable that their lines of defense at trial will become inconsistent and antagonistic and severance is necessary to forestall that result and ensure a fair trial. In such cases, the hostility between the co-defendants is likely to surface at trial whether or not they each take the stand themselves. An unacceptable spectacle occurs in which the trial becomes as much a contest between the defendants as it is a contest between either defendant and the prosecution."

Since each defendant's attorney attempted to place blame for the offenses on the other defendant, "[t]he prejudice that the motion for severance was designed to prevent actually occurred in this case." Because the risk of prejudice is inherent in this situation, the motion for severance should have been granted.

[People v. Bean, 109 Ill.2d 80, 485 N.E.2d 349 \(1985\)](#) Defendant was jointly tried with a codefendant, was convicted of various offenses, and was sentenced to death. Where the codefendant claimed that "Bean was the murderer and [the codefendant] was not even there," the defenses were "clearly entirely antagonistic." Thus, because defendant was unfairly placed

in a position in which he was forced to defend against both the State and his codefendant, the severance motion should have been granted. See also, [People v. Byron, 116 Ill.2d 81, 506 N.E.2d 1247 \(1987\)](#).

[People v. Clark, 50 Ill.2d 292, 278 N.E.2d 782 \(1972\)](#) Denial of severance was reversible error in reckless homicide case; in pretrial statements, each defendant claimed that the other caused the accident. See also, [People v. Bailey, 182 Ill.App.3d 867, 538 N.E.2d 718 \(1st Dist. 1989\)](#).

[People v. Schmitt, 131 Ill.2d 128, 545 N.E.2d 665 \(1989\)](#) Two codefendants, Schmitt and Nielsen, were charged with the unlawful delivery of a controlled substance. Before trial, Nielsen moved for a severance because the defenses were antagonistic and because Schmitt had given statements implicating Nielsen. The trial court failed to rule on the motion before the bench trial started.

During the testimony of the first witness, Nielsen's attorney noticed the omission and brought it to the attention of the judge. By agreement of the parties, the judge proceeded as if the cases had been severed. Thus, simultaneous but separate bench trials were conducted for each defendant. Throughout the trials, the judge repeatedly said that Schmitt's statements were not being considered against Nielsen.

By failing to obtain a pretrial ruling on the severance motion and acquiescing in the procedure used by the trial court, Nielsen waived any claim that the procedure was improper. A trial judge is capable of "compartmentalizing its consideration of the evidence," and the record did not suggest that the trial judge considered evidence admissible as to only one codefendant against the other codefendant.

[People v. Harris, 198 Ill.App.3d 1002, 556 N.E.2d 709 \(1st Dist. 1990\)](#) The trial judge did not err in denying defendant's motion for severance, which asserted that there was overwhelming evidence against the codefendant and little against defendant. The case was not complicated, there were only a limited number of witnesses, and "the jury could properly compartmentalize the evidence" against each defendant.

[People v. Turner, 143 Ill.App.3d 417, 493 N.E.2d 38 \(1st Dist. 1986\)](#) Denial of severance request upheld; the defenses were not antagonistic and there was no hostility between the defendants. See also, [People v. Crose, 194 Ill.App.3d 97, 550 N.E.2d 1102 \(1st Dist. 1990\)](#).

[People v. Arnold, 91 Ill.App.2d 282, 233 N.E.2d 764 \(4th Dist. 1968\)](#) A severance is not required merely because separate counsel are appointed for jointly-indicted defendants.

[People v. Carter, 145 Ill.App.3d 985, 496 N.E.2d 1206 \(3d Dist. 1986\)](#) In reviewing trial court's ruling on a motion for severance, courts of review do not consider the "subsequent happenings" at trial.

[People v. Fort, 147 Ill.App.3d 14, 497 N.E.2d 416 \(1st Dist. 1986\)](#) The trial judge erred in denying a motion for severance; counsel indicated that Cannon would testify that Fort committed the crimes, that Cannon attempted to stop him, and that Cannon was acting under Fort's threats and compulsion. Relying on [People v. Bean, 109 Ill.2d 80, 485 N.E.2d 349 \(1985\)](#) and [People v. Daugherty, 102 Ill.2d 533, 468 N.E.2d 969 \(1984\)](#), the Appellate Court held that the trial judge's ruling forced the defendants "to defend themselves from each other

as well as the State." See also, [People v. Spain, 285 Ill.App.3d 228, 673 N.E.2d 414 \(1st Dist. 1996\)](#) (defendant's oral motion at trial was sufficient to advise trial court of need for severance; defenses were antagonistic where each defendant blamed the other).

[People v. Johnson, 187 Ill.App.3d 756, 544 N.E.2d 392 \(1st Dist. 1989\)](#) Defendants Solomon and Irvin Johnson were jointly tried before a jury, and were convicted of murder and armed robbery. Before trial, both defendants had moved for severance because their defenses were antagonistic. In addition, Solomon contended that he would be deprived of his right to confrontation if Irvin's statement, which implicated Solomon, was admitted in a joint trial. The trial judge denied the severance motions, finding that the defenses were not antagonistic and that Irvin's statement was admissible.

A severance should have been granted. Solomon claimed that he was not present or involved in the murder, and that he was picked up by Irvin and another man after they had murdered the victim. Irvin, on the other hand, claimed that the victim died only after Solomon and the other man struck him with a hammer. Because these defenses were antagonistic, both defendants were denied a fair trial. See also, [People v. Collins, 186 Ill.App.3d 35, 541 N.E.2d 1308 \(1st Dist. 1989\)](#) (redacting one codefendant's statement did not cure antagonistic defenses; Collins claimed to have been an uninvolved witness to the crime, while Hayes claimed that Collins had planned the offense and forced him to participate).

[People v. Trass, 136 Ill.App.3d 455, 483 N.E.2d 567 \(1st Dist. 1985\)](#) Before his joint trial with Trass, Bryant moved for severance because his testimony would be antagonistic with a statement Trass had given to police. The trial judge denied the motion, but ordered that Bryant's name be redacted from Trass's statement.

At trial, the victim testified that Bryant approached him and demanded money. When the victim refused to comply with the demand, he was attacked by several people who were with Bryant. In [Trass's](#) statement, which was also introduced, Trass said that he saw the victim approached by "a male" who demanded money. Trass said that a "group of males who were with this original male" then attacked the victim. Trass's statement, even in its redacted form, clearly implied "that defendant Bryant was 'the male' referred to in [Trass](#)' statement." Thus, the trial judge erred by denying severance.

[People v. Jackson, 150 Ill.App.3d 1, 501 N.E.2d 802 \(1st Dist. 1986\)](#) The trial judge erred by denying defendants' motions for severance of jury trials for armed robbery. Where defendant Ranato Jackson "clearly pointed at Darnell Jackson and a third party . . . as the perpetrators of the offense," the defenses were clearly antagonistic although "Ranato himself never explicitly used Darnell's name." Furthermore, the antagonism was manifested in opening statements (when Ranato's counsel contrasted the absence of any evidence on Ranato with the fact that Darnell was found with a gun and knife) and in closing argument (where counsel argued that Ranato was "not his brother's keeper" and was "not responsible for" Darnell's actions).

[People v. Wheeler, 121 Ill.App.2d 337, 257 N.E.2d 587 \(1st Dist. 1970\)](#) The trial court's should have granted a severance sua sponte where a codefendant's statements were used to incriminate defendant.

[People v. McMullen, 88 Ill.App.3d 611, 410 N.E.2d 1174 \(4th Dist. 1980\)](#) Defendants were jointly charged with indecent liberties and other offenses. Defendant moved to sever the

trials, alleging that he would be prejudiced if the codefendant testified in accordance with his pretrial statements. Upon the prosecutor's assurance that the State did not intend to use the codefendant's statements, the trial court denied the motion for severance.

Defendant testified that he did not touch the complainant, and presented a witness to corroborate his denial. However, the codefendant testified that both he and defendant had touched the complainant.

The trial court erred by denying the severance motion. Defendant's defense was obviously antagonistic with that of the codefendant, and defendant's allegations and arguments were sufficient to show this antagonism.

People v. Dorsey, 88 Ill.App.3d 712, 410 N.E.2d 1132 (1st Dist. 1980) Redaction of defendants' statements did not cure the need for a severance. In editing defendant's statement, the State eliminated all reference to a second participant, so that defendant's statement appeared to say that only one person had been involved in the murder. Since an eyewitness and the physical evidence suggested that two gunmen had been involved, the redaction made defendant's statement seem unreliable and destroyed his theory that the codefendant and a third person had been the assailants. Had defendant been tried separately, he could have had his entire statement read to the jury and eliminated the apparent conflict with the remaining evidence.

People v. McVay, 98 Ill.App.3d 708, 424 N.E.2d 922 (3d Dist. 1981) Defendant moved for a severance based upon the State's introduction of two statements by the codefendant. The codefendant allegedly called defendant's sister and told her to remove certain proceeds of the burglary from his glove compartment. He also told the sister that defendant would "go down with him." The trial judge, while acknowledging the possible prejudice, denied the motion in the belief that cautionary instructions would "negate any possible prejudice."

The trial judge erred by denying the severance. Although the co-defendant's statements did not expressly indicate that defendant had participated in the burglary, when examined in light of the other evidence the statements readily led to such a conclusion. "Cautionary instructions are insufficient to combat the prejudice flowing from the introduction of such evidence."

The fact that the codefendant testified at trial did not change the need for a severance; "[e]ven with the ability to cross-examine, the prejudice to a defendant from the incriminating admission by a co-defendant remained."

People v. Causey, 127 Ill.App.3d 1080, 470 N.E.2d 18 (1st Dist. 1984) Redaction was insufficient where it "did not disguise the fact" that codefendant told a detective that another man was involved, and immediately thereafter the detective went to arrest defendant. Despite deletion of defendant's name from the statement, it was clear that he had been implicated by the codefendant.

People v. Tibbs, 57 Ill.App.3d 1007, 373 N.E.2d 624 (5th Dist. 1978) Mistrial should have been ordered where the trial court granted a codefendant's motion for a directed verdict at the close of the State's case. By directing a verdict for the codefendant, the trial judge "effectively destroyed [defendant's] defense," and may have led the jury to conclude that the trial court believed that defendant, and not the codefendant, was guilty.

People v. Murphy, 93 Ill.App.3d 606, 417 N.E.2d 759 (1st Dist. 1981) Defendants were tried

simultaneously on armed robbery charges. Murphy was tried by the court, while Bell was tried by a jury. Before trial, Bell moved to have any testimony by Murphy given outside the presence of Bell's jury. The court reserved ruling on this motion.

Bell testified, presented an alibi defense, and called witnesses to corroborate his testimony. Murphy elected to testify, and Bell renewed the motion to have the jury excused from Murphy's testimony. In renewing the motion, Bell's attorney argued that Murphy's testimony would implicate Bell and contradict his alibi. The motion was denied.

The trial judge erred by denying Bell's motion to exclude his jury during Murphy's testimony. That testimony was clearly antagonistic to Bell; in addition to contradicting Bell's alibi, Murphy "plainly implicated Bell in the alleged robbery." To eliminate any possible prejudice, the trial court should have granted a severance.

People v. Jones, 81 Ill.App.3d 724, 401 N.E.2d 1325 (4th Dist. 1980) The trial judge erred by denying a motion for severance; the defenses were antagonistic where codefendant would testify that defendant was present at the crime scene, and defendant would testify that he was not.

People v. Rodriguez, 289 Ill.App.3d 223, 680 N.E.2d 757 (2d Dist. 1997) Joint trial with separate juries did not cure need for severance where trial court erroneously allowed defendant's jury to remain in courtroom during codefendant's cross-examination of witnesses about their statements identifying defendant.

Cumulative Digest Case Summaries §51-1

People v. Fleming, 2014 IL App (1st) 113004 (No. 1-11-3004, 6/25/14)

1. **725 ILCS 5/111-4(a)** provides that two or more offenses may be charged in the same indictment if the offenses are based on the same act or on two or more acts which are part of the same comprehensive transaction. Under **725 ILCS 5/111-4(b)**, two or more defendants may be jointly charged if they are alleged to have participated in the same comprehensive transaction. Factors to be considered in determining whether acts were part of the same comprehensive transaction include: (1) the proximity in time and location of the various charges, (2) the identity of the evidence which would be presented to prove each charge, (3) whether the offenses shared a common method, and (4) whether the same or similar evidence would establish the elements of the offenses.

Under **725 ILCS 5/114-8**, the trial court has discretion to sever jointly charged offenses or defendants where it appears that either the defendant or the State is prejudiced by joinder. Absent an abuse of discretion, a reviewing court will affirm the trial court's decision whether to grant severance.

2. As a matter of first impression, the court concluded that a defendant and co-defendant who participated in several attempted armed robberies, attempted to flee in the same vehicle, and ran in separate directions when they were accosted by police could be jointly tried on charges relating to the armed robberies, even though the co-defendant was also tried before the same jury for attempted murder and aggravated discharge of a firearm resulting from shooting at two police officers after he and defendant separated. Defendant was not charged with any offenses concerning the officers.

The court concluded that joinder was proper because the acts alleged against the co-defendant were part of a comprehensive transaction which involved the charges against both defendants. Because the offenses occurred so close in time and location and there was common

evidence with respect to the offenses, the trial court did not abuse its discretion by finding that the offenses were part of a comprehensive transaction.

3. The court rejected defendant's contention that he was prejudiced by being tried before a single jury which considered the charges against both defendants along with the more serious charges which were lodged against only the co-defendant. The trial court admonished the jury to give separate consideration to each defendant, decide each case on the evidence that applied to the particular defendant, and consider evidence that was admitted against a single defendant only as it related to that defendant. Because the jury is presumed to follow its instructions, defendant was unable to show that he was prejudiced.

(Defendant was represented by Assistant Defender Brett Zeeb, Chicago.)

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§51-2

Joinder of Charges

[People v. Pullum, 57 Ill.2d 15, 309 N.E.2d 565 \(1974\)](#) Armed robbery and possession of marijuana charges should have been severed; charges were wholly unrelated and occurred 16 days apart.

[People v. Edwards, 63 Ill.2d 134, 345 N.E.2d 496 \(1976\)](#) Armed robbery and felonious unlawful use of weapons charges were erroneously joined. Because the weapons charge required pleading and proof of a prior felony conviction, there was a "significant risk that the trier of fact will use the evidence of a prior conviction in determining the defendant's guilt or innocence" on the unrelated armed robbery.

[People v. Perry, 47 Ill.2d 402, 266 N.E.2d 330 \(1971\)](#) It was proper to join armed robbery and aggravated battery charges that were based on the same occurrence.

[People v. Quigley, 183 Ill.2d 1, 697 N.E.2d 735 \(1998\)](#) Offenses must be prosecuted in a single action where the charges are known to the prosecutor when the prosecution begins, are within the jurisdiction of the court, and are based on the "same act." Here, there was no dispute that misdemeanor and aggravated DUI charges arising from a single motor vehicle collision were known to the prosecutor when the prosecution began and were within the jurisdiction of a single court.

The Appellate Court held, however, that defendant committed the misdemeanor DUI when he started his vehicle's engine and the aggravated DUI when he performed "some other act" that led to the accident. The Supreme Court rejected that interpretation, finding that both the felony and misdemeanor DUI offenses were based on the "continuing" act of driving a vehicle while under the influence of alcohol. Thus, they should have been brought in a single prosecution. The Supreme Court refused to give a "hypertechnical interpretation" to the phrase "based on the same act" in order to create multiple acts "based on discrete moments in time."

[People v. Walston, 386 Ill.App.3d 598, 900 N.E.2d 267 \(2d Dist. 2008\)](#) A court may try two or more charges together if the offenses could have been charged in a single instrument. Two or more offenses may be charged in the same instrument if the offenses are based on the same act or on two or more acts "which are part of the same comprehensive transaction,"

unless it appears that defendant will be prejudiced by the joinder.

In determining whether two or more crimes are part of the "same comprehensive transaction," several factors are considered, including: (1) the proximity, time, and location of the offenses, (2) the identity of evidence needed to demonstrate a link between the offenses, (3) whether there was a common method in the offenses, and (4) whether the same or similar evidence would establish elements of the offenses.

Two counts of aggravated criminal sexual assault were not part of the "same comprehensive transaction." Even similar incidents are unlikely to be deemed part of a "comprehensive transaction" if they do not occur closely in time and space. Because the offenses involved different victims and occurred approximately 16 days apart, they were not part of the same "comprehensive transaction" although both occurred in the same location (defendant's bedroom), both victims testified they met defendant in a bar, and defendant befriended both victims before allegedly assaulting them.

The second factor – the identity of evidence used to demonstrate a link between the offenses – asks "not whether evidence of the two crimes is similar or identical, but whether the court can identify evidence linking the crimes." The third factor – whether there was a common method in the offenses – considers not *modus operandi*, but whether the offenses were part of a common scheme. Finally, the fourth factor – whether the same or similar evidence would establish the elements of the offenses – is relevant to joinder only if it is directed at whether multiple offenses are part of the "same comprehensive transaction." In other words, offenses that are not part of the same transaction may not be joined even if similar evidence establishes both.

However, the trial court committed harmless error by finding the two offenses could be charged in a single prosecution. Because evidence of both charges would have been admissible in separate trials under [725 ILCS 5/115-7.3](#), which authorizes evidence of other crimes to show a defendant's propensity to commit sex offenses so long as the prejudicial effect of the other crimes evidence does not substantially outweigh its probative value, no inadmissible evidence was introduced when the charges were tried together.

[**People v. Sockwell**, 55 Ill.App.3d 174, 371 N.E.2d 100 \(2d Dist. 1977\)](#) The trial court does not abuse its discretion by denying a motion to sever charges that are part of a general transaction, plan or scheme.

[**People v. Bricker**, 23 Ill.App.3d 394, 319 N.E.2d 255 \(4th Dist. 1974\)](#) Defendant was charged with two armed robberies, one at a hotel about 3:30 a.m. on July 14, and the other at a service station at 12:30 a.m. on the same date. Defendant's pretrial motion for severance of the two charges was denied. In a jury trial, defendant was convicted of one charge and acquitted of the other. Denial of the severance deprived defendant of a fair trial, because the two charges were separate and independent acts and not part of the same comprehensive transaction. See also, [**People v. Fleming**, 121 Ill.App.2d 97, 257 N.E.2d 271 \(1st Dist. 1970\)](#).

[**People v. Harmon**, 194 Ill.App.3d 135, 550 N.E.2d 1140 \(1st Dist. 1990\)](#) The trial court did not err by allowing battery and mob action charges to be joined with a murder charge. The offenses involved a common motive to attack rival gang members, and the offenses occurred a few minutes and a few blocks apart. The victims of all offenses need not be the same before joinder can be ordered. The charges were "sufficiently related in location, time, motive, design, method and common evidence to support" joinder.

[People v. Harris, 147 Ill.App.3d 891, 498 N.E.2d 621 \(1st Dist. 1986\)](#) Trial court did not abuse discretion by allowing joinder of two home invasions and related offenses. Because the offenses occurred within two blocks and 31 hours of each other, they were part of the same comprehensive transaction. See also, [People v. Stevens, 188 Ill.App.3d 865, 544 N.E.2d 1208 \(4th Dist. 1989\)](#).

[People v. York, 29 Ill.App.3d 113, 329 N.E.2d 845 \(5th Dist. 1975\)](#) Two counts of aggravated incest, against different complaining witnesses, should not have been tried at the same trial. The offenses were separate and distinct and did not constitute the same transaction.

[People v. Trail, 197 Ill.App.3d 742, 555 N.E.2d 68 \(4th Dist. 1990\)](#) The trial court did not abuse its discretion by allowing two counts of criminal sexual assault to be tried at a single trial. One count involved sexual acts against a stepdaughter between late 1985 and early 1987, and the other involved acts against a different stepdaughter in 1987 and 1988. The alleged crimes occurred within the same household during closely related periods of time, and evidence of each offense would have been admissible as other crimes evidence had the offenses been tried separately.

[People v. Olson, 59 Ill.App.3d 643, 375 N.E.2d 533 \(4th Dist. 1978\)](#) Trial court did not abuse discretion by denying defendant's request to join three delivery of controlled substance charges. Although the deliveries were made to the same police officer, they occurred on separate occasions and were not part of an overall plan to furnish an uninterrupted supply of drugs.

[People v. Wells, 184 Ill.App.3d 925, 540 N.E.2d 1070 \(1st Dist. 1989\)](#) Two counts of delivery of controlled substances were properly joined. Although the offenses occurred two weeks apart, both were part of the same comprehensive transaction. The evidence showed an overall plan to furnish a continuing supply of cocaine to the buyer, future sales depended on the quality of cocaine supplied in the first delivery, and both deliveries occurred in the same place and at the same time of day.

[People v. Houston, 288 Ill.App.3d 90, 679 N.E.2d 1244 \(4th Dist. 1997\)](#) Where defendant used a false name to defraud to the telephone company by obtaining telephone service that would otherwise have been denied, only one fraudulent misrepresentation occurred. The State erred by charging defendant with a separate count of telephone fraud for each month she received telephone service.

Although the telephone company bills customers on a monthly basis, the crime of telephone fraud "is completed when a defendant establishes or attempts to establish access to telecommunication service."

Cumulative Digest Case Summaries §51-2

[People v. Hunter, 2013 IL 114100 \(No. 114100, 4/4/13\)](#)

1. [720 ILCS 5/3-3\(b\)](#) provides that charges which are known to the prosecution, based on the same act, and within the jurisdiction of a single court must be joined in a single prosecution unless the trial court determines that separate trials are required in the interests of justice. Once a speedy trial demand is filed, offenses which are subject to compulsory joinder

are subject to the same speedy trial term, even if some of the charges are brought at a later date.

2. The court concluded that offenses based on the simultaneous constructive possession of cannabis and two firearms were based on a single act. Although the term “act” is ambiguous, for purposes of the compulsory joinder statute “act” has been defined as including situations where several persons are affected by a single act of the defendant (such as where the defendant steals a container which includes the property of several persons) or where one act violates multiple statutes. Because the compulsory joinder statute is intended to prevent the prosecution of multiple offenses in a piecemeal fashion, joinder is required where the defendant engaged in “only one continuous and uninterrupted act” which results in multiple charges.

The court noted that defendant was not in physical custody of the weapons and cannabis, and that the offenses were based on his constructive possession of the items due to his knowledge of their presence and control over the area where they were found. Because all of the items of contraband were the “object of the same act of constructive possession,” joinder was required.

The court rejected the State’s argument that it should adopt an “elements-based” analysis and find that offenses composed of different elements and evidence constitute separate “acts” and are not subject to compulsory joinder. The court noted that such analysis applies to the “one act, one crime” doctrine, but does not apply to the compulsory joinder statute.

Because five counts relating to the possession of the weapons were filed 175 days after defendant made a speedy trial demand on the original possession of cannabis charges, and the offenses were based on the same act and known to the prosecution when the original charges were filed, the speedy trial period applicable to the original charge also applies to the subsequently brought charges. Because the weapon charges were filed more than 160 days after the speedy trial demand, those charges were properly dismissed.

(Defendant was represented by Assistant Defender Amanda Ingram, Chicago.)

People v. Fleming, 2014 IL App (1st) 113004 (No. 1-11-3004, 6/25/14)

1. [725 ILCS 5/111-4\(a\)](#) provides that two or more offenses may be charged in the same indictment if the offenses are based on the same act or on two or more acts which are part of the same comprehensive transaction. Under [725 ILCS 5/111-4\(b\)](#), two or more defendants may be jointly charged if they are alleged to have participated in the same comprehensive transaction. Factors to be considered in determining whether acts were part of the same comprehensive transaction include: (1) the proximity in time and location of the various charges, (2) the identity of the evidence which would be presented to prove each charge, (3) whether the offenses shared a common method, and (4) whether the same or similar evidence would establish the elements of the offenses.

Under [725 ILCS 5/114-8](#), the trial court has discretion to sever jointly charged offenses or defendants where it appears that either the defendant or the State is prejudiced by joinder. Absent an abuse of discretion, a reviewing court will affirm the trial court’s decision whether to grant severance.

2. As a matter of first impression, the court concluded that a defendant and co-defendant who participated in several attempted armed robberies, attempted to flee in the same vehicle, and ran in separate directions when they were accosted by police could be jointly tried on charges relating to the armed robberies, even though the co-defendant was also tried before the same jury for attempted murder and aggravated discharge of a firearm resulting

from shooting at two police officers after he and defendant separated. Defendant was not charged with any offenses concerning the officers.

The court concluded that joinder was proper because the acts alleged against the co-defendant were part of a comprehensive transaction which involved the charges against both defendants. Because the offenses occurred so close in time and location and there was common evidence with respect to the offenses, the trial court did not abuse its discretion by finding that the offenses were part of a comprehensive transaction.

3. The court rejected defendant's contention that he was prejudiced by being tried before a single jury which considered the charges against both defendants along with the more serious charges which were lodged against only the co-defendant. The trial court admonished the jury to give separate consideration to each defendant, decide each case on the evidence that applied to the particular defendant, and consider evidence that was admitted against a single defendant only as it related to that defendant. Because the jury is presumed to follow its instructions, defendant was unable to show that he was prejudiced.

(Defendant was represented by Assistant Defender Brett Zeeb, Chicago.)

People v. Johnson, 2013 IL App (2d) 110535 (Nos. 2-11-0535 & 2-11-0782 cons., 5/31/13)

A court may order two or more charges to be tried together if the offenses could have been joined in a single charge. [725 ILCS 5/114-7](#). Two or more offenses may be charged in the same charging instrument if the offenses are based on the same act or on two or more acts that are part of the same comprehensive transaction ([725 ILCS 5/111-4\(a\)](#)), unless it appears that the defendant will be prejudiced by the joinder of the separate charges ([725 ILCS 5/114-8](#)).

Whether two crimes are part of the same comprehensive transaction so as to be susceptible to joinder is determined by considering the following factors: (1) the proximity in time and location of the offenses; (2) the identity of the evidence needed to demonstrate a link between the offenses; (3) whether there was a common method in the offenses; and (4) whether the same or similar evidence would establish the elements of the offenses.

Defendant was tried for UUC by a felon and domestic battery. These offenses were not part of the same comprehensive transaction so as to warrant joinder. The factor of proximity in time and location is a neutral factor. All other factors weigh against joinder. The offenses occurred on the same premises at the same time but in different locations on the premises. Although there was evidence that defendant had made threats to the complainant in connection with prior domestic batteries, there was no evidence linking existence of the weapon and the charged domestic battery, as defendant's threats did not deter complainant from reporting the charged offense. The weapon can be viewed as part of the same common scheme as the uncharged offenses, but there was no evidence that defendant committed the charged domestic battery to facilitate his possession of the gun or that the possession of the gun was part of a common criminal scheme in committing the charged domestic battery. There was no commonality of evidence between the domestic battery and the UUC by a felon charges.

(Defendant was represented by Assistant Defender Yasemin Eken, Elgin.)

People v. Kazenko, 2012 IL App (3d) 110529 (No. 3-11-0529, 7/2/12)

The compulsory-joinder rule does not apply to offenses that are charged by a uniform citation and complaint form provided for traffic offenses. [People v. Jackson, 118 Ill. 2d 179, 514 N.E.2d 983 \(1987\)](#). The compulsory-joinder rule applies only if the several offenses are known to the proper prosecuting officer, i.e., the State's Attorney, when the prosecution began. Uniform citation and complaint forms are filled out and filed by police officers, not by a State's

Attorney, so the compulsory-joinder rule does not apply to offenses charged in that manner.

Schmidt, J., specially concurred. The majority's reliance on [Jackson](#) is misplaced because **Jackson** is distinguishable. The new charge in [Jackson](#) was a felony charge that could not be charged by use of a uniform citation form and therefore it was impossible for the officer writing the ticket to charge the traffic offense and the felony. Here, the new charge was another DUI charge of which the charging officer was aware and able to charge at the time the original charge was made.

[People v. Luciano, 2013 IL App \(2d\) 110792 \(No. 2-11-0792, 3/14/13\)](#)

If several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution. [720 ILCS 5/3-3\(b\)](#).

"Knowledge" provides a fairly high threshold to trigger compulsory joinder. It requires conscious awareness of evidence that is sufficient to give the State a reasonable chance to secure a conviction. Whether the State has that awareness must be determined on a case-by-case basis.

(Defendant was represented by Assistant Defender Jonathan Yeasting, Chicago.)

[People v. McGee, 2015 IL App \(1st\) 130071](#) (Nos. 1-13-0071 & 1-13-0715 cons., modified upon allowance of rehearing 5/5/16)

1. [Under the speedy-trial statute, every defendant must be tried within either 120 or 160 days](#), depending on his custodial status, unless delay is caused by the defendant. [725 ILCS 5/103-5](#). When a defendant is charged at different times with multiple offenses, the speedy-trial guarantee is "tempered by compulsory joinder principles."

Under the compulsory joinder statute, multiple charges must be joined in a single prosecution where: (1) the charges are based on the same act, (2) the multiple charges are known to the prosecutor when the prosecution begins, and (3) the charges are within the jurisdiction of a single court. [720 ILCS 5/3-3](#).

2. The evidence showed that defendant and co-defendant severely beat the victim with a board in Illinois and that the victim's burned body was found a few hours later in a burning building in Indiana. The medical examiner determined that the victim died from extensive blunt-force trauma and extensive burns. The medical examiner was not certain whether the victim was dead or alive when the fire in the building started, but he did testify on cross-examination that he had told a colleague that the victim was dead when the fire started.

The State initially charged defendant with several offenses but not first-degree murder. Approximately 18 months later, the State filed a new indictment charging defendant with first-degree murder and nol-prossed the original charges. Defendant filed a motion to dismiss the new charges on speedy trial grounds. The trial court denied the motion.

3. The Appellate Court held that the State violated the speedy-trial statute by bringing new charges 18 months after the initial indictment. The court rejected the State's arguments that it was not required to join the murder charges when the original indictment was filed because: (1) the prosecution was not aware that the acts which caused defendant's death occurred in Illinois; and (2) the murder fell within the jurisdiction of more than one court.

First, the State argued that it only learned that the acts causing death occurred in Illinois, and thus only charged defendant with murder, when the medical examiner testified during cross-examination that he had once opined that the victim was already dead when the fire started. The court rejected this argument since the medical examiner's trial testimony could not possibly have prompted the State's pretrial decision to charge defendant with

murder. Additionally, the court found that the State had ample knowledge, apart from the medical examiner's opinion, to charge defendant with murder.

Illinois has jurisdiction over a crime that occurs wholly or partly within the State. [720 ILCS 5/1-5\(a\)\(1\)](#). An offense is committed partly in Illinois if the conduct that constitutes an element of the offense occurs in Illinois. [720 ILCS 5/1-5\(b\)](#). The evidence here showed that the victim was severely beaten in Illinois just a few hours before his body was found in Indiana. Coupled with the medical examiner's opinion that the victim died from extensive blunt-force trauma, this evidence gave the State ample information to charge defendant with murder at the time it issued the original charges.

Second, the State argued that compulsory joinder does not apply to offenses where, as here, more than one State has jurisdiction over the case. The court rejected the State's argument, holding that the phrase "jurisdiction of a single court" does not preclude the State from bringing charges simply because another court also had jurisdiction. The compulsory joinder statute requires the State to bring all charges under its jurisdiction even when another State also has jurisdiction.

4. Since the murder charges were subject to compulsory joinder, the same speedy-trial time period applied to both the original and new charges. Further, although delay caused by the defendant tolls the speedy trial clock, continuances obtained in connection with the original charges cannot be attributed to defendant with regard to the new charges since the new charges were not before the court when defendant requested continuances. Therefore none of the continuances defendant obtained here prior to the new charges could be attributed to him.

The court reversed defendant's conviction for first-degree murder, entered conviction on the lesser-included offense of aggravated battery, and remanded for resentencing.

(Defendant was represented by Assistant Defender Kadi Weck, Chicago.)

[People v. Moody, 2015 IL App \(1st\) 130071](#) (Nos. 1-13-0071 & 1-13-0715 cons., modified upon allowance of rehearing 5/5/16)

1. [Under the speedy-trial statute, every defendant must be tried within either 120 or 160 days, depending on his custodial status, unless delay is caused by the defendant. 725 ILCS 5/103-5.](#) When a defendant is charged at different times with multiple offenses, the speedy-trial guarantee is "tempered by compulsory joinder principles."

Under the compulsory joinder statute, multiple charges must be joined in a single prosecution where: (1) the charges are based on the same act, (2) the multiple charges are known to the prosecutor when the prosecution begins, and (3) the charges are within the jurisdiction of a single court. [720 ILCS 5/3-3](#).

2. The evidence showed that defendant and co-defendant severely beat the victim with a board in Illinois and that the victim's burned body was found a few hours later in a burning building in Indiana. The medical examiner determined that the victim died from extensive blunt-force trauma and extensive burns. The medical examiner was not certain whether the victim was dead or alive when the fire in the building started, but he did testify on cross-examination that he had told a colleague that the victim was dead when the fire started.

The State initially charged defendant with several offenses but not first-degree murder. Approximately 18 months later, the State filed a new indictment charging defendant with first-degree murder and nol-prossed the original charges. Defendant filed a motion to dismiss the new charges on speedy trial grounds. The trial court denied the motion.

3. The Appellate Court held that the State violated the speedy-trial statute by bringing new charges 18 months after the initial indictment. The court rejected the State's arguments

that it was not required to join the murder charges when the original indictment was filed because: (1) the prosecution was not aware that the acts which caused defendant's death occurred in Illinois; and (2) the murder fell within the jurisdiction of more than one court.

First, the State argued that it only learned that the acts causing death occurred in Illinois, and thus only charged defendant with murder, when the medical examiner testified during cross-examination that he had once opined that the victim was already dead when the fire started. The court rejected this argument since the medical examiner's trial testimony could not possibly have prompted the State's pretrial decision to charge defendant with murder. Additionally, the court found that the State had ample knowledge, apart from the medical examiner's opinion, to charge defendant with murder.

Illinois has jurisdiction over a crime that occurs wholly or partly within the State. [720 ILCS 5/1-5\(a\)\(1\)](#). An offense is committed partly in Illinois if the conduct that constitutes an element of the offense occurs in Illinois. [720 ILCS 5/1-5\(b\)](#). The evidence here showed that the victim was severely beaten in Illinois just a few hours before his body was found in Indiana. Coupled with the medical examiner's opinion that the victim died from extensive blunt-force trauma, this evidence gave the State ample information to charge defendant with murder at the time it issued the original charges.

Second, the State argued that compulsory joinder does not apply to offenses where, as here, more than one State has jurisdiction over the case. The court rejected the State's argument, holding that the phrase "jurisdiction of a single court" does not preclude the State from bringing charges simply because another court also had jurisdiction. The compulsory joinder statute requires the State to bring all charges under its jurisdiction even when another State also has jurisdiction.

4. Since the murder charges were subject to compulsory joinder, the same speedy-trial time period applied to both the original and new charges. Further, although delay caused by the defendant tolls the speedy trial clock, continuances obtained in connection with the original charges cannot be attributed to defendant with regard to the new charges since the new charges were not before the court when defendant requested continuances. Therefore none of the continuances defendant obtained here prior to the new charges could be attributed to him.

The court reversed defendant's conviction for first-degree murder.

(Defendant was represented by Assistant Defender Sarah Curry, Chicago.)

People v. Thomas, 2014 IL App (2d) 130660 (No. 2-13-0660, 5/29/14)

The State charged defendant with misdemeanor DUI (based on impairment) by means of a verified complaint filed by the police. Over 160 days after defendant filed a demand for speedy trial, the prosecutor's office filed an information charging defendant with DUI (based on blood alcohol levels).

1. The second DUI charge was properly dismissed on speedy trial grounds. Under [725 ILCS 5/103-5\(b\)](#), the State must try a defendant within 160 days of the date defendant demands trial unless delay is caused by defendant. When the State files additional charges that arose from the same facts as the original charges, any delay caused by defendant will not be applied to the new charges in determining whether there has been a speedy trial violation. This rule only applies to charges that are subject to compulsory joinder, which requires the prosecution to join all known charges arising from the same act. [720 ILCS 5/3-3](#).

Here the State added the new charge of DUI after 160 days had passed, and since that charge was subject to compulsory joinder, none of the delay caused by defendant could be considered against the second DUI charge, and thus it was barred by the speedy trial statute.

2. The second DUI charge was subject to compulsory joinder even though the first charge was filed by the police in a verified complaint. In [People v. Jackson, 118 Ill. 2d 179 \(1987\)](#), the Illinois Supreme Court held that compulsory joinder did not apply where the initial charges were traffic offenses filed in a complaint by the police and the new charges were felonies filed by the prosecutor in an information or indictment.

Jackson did not apply to this case because here both the initial DUI and the new DUI charges were misdemeanors that could have been filed by the police through verified complaints. A felony, by contrast, can only be filed through an indictment or information. Since the vast majority of traffic and misdemeanor cases are charged by the police, expanding **Jackson** to the current situation would mean that compulsory joinder would almost never apply to misdemeanors, an outcome that would be “absurd and ill-advised.”

[People v. Walton, 2013 IL App \(3d\) 110630 \(No. 3-11-0630, 5/29/13\)](#)

The joinder statute allows the State to aggregate multiple acts of theft, and their associated property values, in a single offense of theft where the separate acts of theft are “in furtherance of a single intention and design.” [725 ILCS 5/111-4\(c\)](#). When the State utilizes this joinder provision, the allegation that the acts were in furtherance of a single intention and design becomes an essential element of the offense. Failure to allege the element prejudices the defense, because it has no notice that the State is required to allege and prove that the thefts were in furtherance of a single intention and design. When the State relies on the accumulated value of the property to prove the felony amount, the omission of this element requires a court to reduce a defendant’s conviction from felony theft to misdemeanor theft.

The State charged the defendant with one act of felony theft under 720 ILCS 16-1(a)(4)(A) in that she obtained control of multiple items of stolen property from various stores having a total value of more than \$500 but not exceeding \$10,000, under such circumstances as would reasonably induce defendant to believe the property was stolen. This allegation sufficiently charged defendant with felony theft under subsection (a)(4) only if defendant obtained control over the multiple items of property through a single act. If they were obtained through multiple acts, the State failed to allege a necessary element – that the multiple acts were in furtherance of a single intention and design. The record is silent on whether defendant obtained control over the stolen property through one or multiple acts.

The Appellate Court concluded that it could reduce defendant’s conviction to a conviction for the lesser-included offense of felony theft under [720 ILCS 5/16-1 \(a\)\(1\)](#), which is violated whenever a person maintains possession over items of property she does not own. This is a continuing crime and does not require an allegation that defendant’s acts were committed in furtherance of a single intention and design.

(Defendant was represented by Assistant Deputy Defender Larry Wells, Mt. Vernon.)

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